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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,855	03/25/2005	Angus Campbell	17151-0001	5343
25267 7590 08/09/2010 BOSE MCKINNEY & EVANS LLP 111 MONUMENT CIRCLE, SUITE 2700 INDIANAPOLIS, IN 46204				
			EXAMINER BOBBS, MICHAEL L	
			ART UNIT 1797	PAPER NUMBER
			NOTIFICATION DATE 08/09/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/529,855

Applicant(s)

CAMPBELL, ANGUS

Examiner

MICHAEL HOBBS

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 66-70, 72-90 and 92-157 is/are pending in the application.
4a) Of the above claim(s) 106-152 is/are withdrawn from consideration.
5) ☒ Claim(s) 66-70, 72-90, 92-105, 153 and 157 is/are allowed.
6) ☒ Claim(s) 154-156 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 25 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment filed on 03/25/2010 has been considered and entered for the record.

Election/Restrictions

2. This application contains claims 106-152 drawn to an invention nonelected with traverse in the reply filed on 04/16/2008. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Priority

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Oath/Declaration

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Specification

5. Applicant's amendment to the specification filed on 05/24/2010 has been considered and entered for the record.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 154-156 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franzen et al. (WO 00/02832) in view of Peguy (FR 2 597 764 A1) (machine translation included).

9. Franzen discloses a method and machine for decomposing compostable waste that discloses the following limitations for claim 154:

"An apparatus for aerobically composting waste material in an aerated composting process, ": Franzen discloses a composting machine that includes

vessel (vessel 10) for receiving the waste (page 2 lines 26-27) and provides a continuous supply of air to the waste in order to maintain and promote the biological decaying process or composting within the vessel (page 2 lines 1-3). Therefore, the composting machine meets the intended use of the instant application.

"an enclosed vessel comprising a first end wall, a second, opposing end wall and side wall(s) defining an interior vessel space;": The composting machine of Franzen includes the vessel (vessel 10) as discussed above where this vessel has a curved side wall (wall 11) , a top wall (wall 12) and a bottom wall (wall 13; page 2 lines 28-29).

"a rotatable shaft located within said vessel space;": Within the interior of the vessel (vessel 10) is a hollow shaft (shaft 16) that extends axially through the center of the vessel and is rotatably mounted in the vessel on a spherical ball bearing (bearing 17) on the lower side of the bottom wall (wall 13) and to a spherical ball bearing (bearing 18) on the upper side of the top wall (wall 12; page 2 line 31 - page 3 line 2).

"a drive means operatively connected to said rotatable shaft for driving said shaft:"
": Further, an electric drive motor (motor 20) is connected to the shaft (shaft 16) via a gear (gear 21; page 3 lines 2 & 3).

"size reduction means for reducing the size of waste material introduced to the vessel;": The interior of the vessel includes six wings (wings 22-27) that are mounted onto the shaft and are attached to the shaft by a screw connection

(connection 29; page 3 lines 4-6 & 10-11). Also, a number of stationary agitators (agitators 39) are mounted on the sidewall (wall 11) and project radially from the inside surface and into the vessel and is located above the rotating wings (vessel 10; page 4 lines 12-15). The wings and agitators co-operate in order to prevent the formation of lumps and clods within the vessel and can therefore "shred" the compost (page 6 lines 10-14).

"wherein said size reduction means divides the interior vessel space into first and second regions and defines a zone of size reduction through which waste material must pass as it passes through the vessel;". As can be seen from Figure 1 of Franzen, the wings and agitators divide the interior of the vessel into "zones".

"said size reduction means comprising one or more cantilevered bars, blades or cutting plates rigidly mounted on said rotatable shaft and rotatable with said shaft, and one or more fixed bars, blades or cutting plates mounted on and extending from said side wall(s), ". As discussed, the wings or blades are mounted on the rotatable shaft and includes agitators or fixed bars that extend from the sidewall.

"wherein said rotatable and fixed bars, blades or cutting plates overlap and co-operate together to create a shearing action so as to reduce the size of the waste material as said waste material passes through said size reduction means;".

Also, from Figure 1, the wings and agitators overlap and do co-operate to break up clumps within the vessel. Furthermore, the wings and agitators are fully

capable of creating a shearing action within the vessel.

"a loading port through which waste material may be introduced to said first region of the vessel;" Franzen discloses an inlet unit (unit 44) with a lid (lid 46) that is connected to the inlet opening (inlet 43; page 4 lines 23-26).

"a discharge port through which waste material may be removed from the second region of the vessel;" Franzen further includes a discharge pipe (pipe 68) or port allows for the removal of the waste which has since been converted to humus (page 7 lines 22-26).

"a source of oxygen for maintaining conditions within said vessel suitable for the aerobic composting of said waste material;" Further, a fan (fan 32) is used to take in air from the surroundings and supplies this air under pressure to the shaft (shaft 16) where the shaft delivers this air to the nozzles (nozzles 30) at the bottom of the vessel (page 3 lines 27-28 and page 4 lines 5-7).

"wherein, when the apparatus is in use, waste material introduced to said vessel moves from said first region through the size reduction means to said second region." Finally, the composted waste within the vessel of Franzen moves from the inlet and past the wings and agitators to the outlet pipe and therefore, Franzen meets this limitation.

However, Franzen differs from claim 154 in that the wings attached to the rotating shaft are not blades.

10. Peguy discloses a mill used to crush and mix domestic garbage that includes for claim 154 movable knives (knives 14) that are mounted to a rotating shaft (shaft 3) that

are teamed with parallel knives (knives 19) within the interior of the mill. During operation, the movable blades rotate and material is introduced into the interior by a chute (chute 18). The material is struck by the movable knives (knives 14) and sheared by the fixed knives (knives 19; paragraph 21 of translation). This serves to mix and crush the organic material.

11. Peguy demonstrates that using the combination of movable and fixed blades to shear compost was an art recognized means for achieving this goal at the time of the instant application. Further, it would have been obvious for one of ordinary skill in the art to employ the blades suggested by Peguy within the compostor of Franzen in order to obtain the predictable result of mixing and crushing or grinding the compost. The suggestion for doing so at the time would have been in order to transform domestic garbage into humus or compost (paragraph 4 of translation).

12. With regards to the limitations of claim 155, the shaft of Franzen is attached at the opposing end walls of the compostor (Fig. 1).

13. With regards to claim 156, Franzen differs from the claim in that the stationary agitators do not extend across the width of the compostor.

Allowable Subject Matter

14. Claims 66-70, 72-90, 92-105, 153 and 157 are allowed.

15. The following is an examiner's statement of reasons for allowance:

For claim 66, the prior art fails to teach or fairly suggest a compostor that includes rigid blades spanning the inner diameter of the composting device and rotating blades

that are mounted, in a rigid manner, to a rotating shaft and where these limitations are coupled with the rest of the limitations of the claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

16. Applicant's arguments, see page 18, first paragraph and page 19, second paragraph, filed 05/24/2010, with respect to claim 66 have been fully considered and are persuasive. The 35 USC 103(a) rejection of claims 66-70, 72-90, 92-105 and 157 has been withdrawn.

17. However, applicant's arguments regarding claim 154 have not been found persuasive.

18. Primarily, the use of the rigid bars or blades attached to the rotating shaft are not recited within the claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

19. Therefore, the rejections of claims 154-156 will stand.

Conclusion

20. Claims 66-70, 72-90, 92-105 and 157 are allowed and claims 154-156 are rejected.

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL HOBBS** whose telephone number is (571)270-3724. The examiner can normally be reached on Monday-Thursday 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on (571) 272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. H./
Examiner, Art Unit 1797

/William H. Beisner/
Primary Examiner, Art Unit 1797